

February 25, 2005

STEVE J DRAGICH
954 FALL CREEK RD
LONGVIEW WA 98632

Subject: Complaint Alleging Violations of RCW 42.17.130 by Cowlitz County
Commissioners and/or Public Facilities District Board Members - PDC Case No. 04-455

Dear Mr. Dragich:

The Public Disclosure Commission (PDC) staff has completed its investigation of your complaint alleging that the Cowlitz County Commissioners and/or officials of the Cowlitz County Public Facilities District violated RCW 42.17.130 by using public facilities, through use of public notices, Public Facilities' equipment and staff, to assist a 2003 ballot proposition. Your complaint was received March 17, 2003, but investigation of your complaint was suspended pending the outcome of a Permanent Injunction that had been issued in King County concerning the Commission's application of RCW 42.17.130. The investigation was restarted April 28, 2004 following the State Supreme Court's reversal of the Permanent Injunction.

PDC staff reviewed your complaint in light of the following statute and administrative rule:

RCW 42.17.130 states in part: "No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for...the promotion of or opposition to any ballot proposition."

"[T]he foregoing provisions of this section shall not apply to the following activities:

...Activities which are part of the normal and regular conduct of the office or agency."

WAC 390-05-273 states in part: "Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

RCW 36.100.160 Expenditure of funds -- Purposes. The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the district. Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election.

RCW 42.17.020(3) "Ballot proposition" means any "measure" as defined by ¹ RCW 29.01.110, or any initiative, recall, or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision, or other voting constituency from and after the time when the proposition has been initially filed with the appropriate election officer of that constituency prior to its circulation for signatures.

RCW 29A.04.091 "Measure" includes any proposition or question submitted to the voters.

You alleged that the Cowlitz County Commissioners authorized public funds for political purposes, as evidenced by a newspaper advertisement, which you stated was published six times in January and February of 2003 and which you believe advocates for *"the sale of \$5.7 million county sponsored taxpayer backed bonds and an increase in the county portion of the hotel/motel tax..."*

In addition, you included a newspaper article from the Longview Daily News, dated March 6, 2003, which you state illustrates that the Cowlitz County Commissioners intended to seek a ballot proposition. It states, *"Cowlitz County voters will be asked to approve a 1 percent lodging tax Sept. 16 to help cover expenses of the county's soon to be built regional conference center."*

We found:

- In 1999, the Cowlitz County Commission created the Cowlitz County Public Facilities District (PFD) by Resolution No. 99-240, under the authority of RCW 36.100.010. As such, the Cowlitz County PFD operates as an independent municipal corporation and taxing district, and is governed by the Public Facilities District Board, whose members serve four year terms. Thus, the Cowlitz County Board of Commissioners was not in a position to use, or authorize the use of, the facilities of the Cowlitz County Public Facilities District.
- On June 3, 2003, the Cowlitz County Board of Commissioners approved an interlocal agreement regarding the design, development, financing, construction and operation of the Regional Conference and Special Events Center between

¹ RCW 29.01.110 and 29.01.090 were recodified as RCW 29A.04.091 and 29A.04.085 pursuant to 2003 c 111 ss2401, effective July 1, 2004.

Cowlitz County and the Cowlitz County Public Facilities District. In addition, the Cowlitz County Board of Commissioners passed Resolution No. 03-086 providing for the issuance of limited tax general obligation bonds for general county purposes to pay part of the cost for the regional center project. Approval of the interlocal agreement and passage of the resolution by the Cowlitz County Board of Commissioners did not require voter approval. Thus, there is no evidence that the Cowlitz County Board of Commissioners violated RCW 42.17.130.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation with regard to the Cowlitz County Commissioners and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the Cowlitz County Board of Commissioners.

You also alleged that Cowlitz County Public Facilities District (PFD) authorized public funds in violation of RCW 42.17.130, as evidenced by a newspaper advertisement that you believe advocates for “... *an increase in the county portion of the hotel/motel tax...*”, allegedly published six times in January and February of 2003. In addition, as evidence, you provided a newspaper article written in March of 2003 to illustrate your argument that the Cowlitz County PFD intended to place a ballot proposition before voters at a later time. Quoted in the article was Nelson Graham, program manager for the PFD, who stated that the September election date was chosen to give the PFD board more time to help people understand why the measure was being placed on the ballot.

We found:

- In a signed declaration, Mr. Graham stated that he had been properly quoted in the March 2003 article. He said the PFD wanted to explain the project in detail to the public by publicizing all aspects of constructing and operating the Regional Conference and Events Center. He said members of the public, motel owners, the county and the cities were all interested in learning what the project entailed. He said the PFD paid for three informational pieces in The Longview Daily News to insure that the overall project was understood and that all information was disclosed to the public, including a proposed lodging tax to pay for a portion of the project’s operating costs. The newspaper ads were published in January, March, April, July, August and October 2003 at a cost of \$13,389.97.
- The first advertisement in question, entitled “*Important information from your Cowlitz County Public Facilities District (PFD)*,” was placed to run in the Longview Daily News on January 26, January 28, and January 31, 2003 by Mr. Graham. The advertisement also ran January 29, 2003 in Neighbors, The Daily News’ companion publication of advertisements, which is distributed to non-newspaper subscribers by hand.

- The full-page ad contained introductory information on the Public Facilities District and its conference center plan, including the financial ramifications of the center, its estimated cost and funding sources, as well as six graphics illustrations. The ad explained that the project will be more than 90 percent self-sufficient within three years of completion, and stated that to cover the remaining 10 percent of operating costs, the PFD board is considering a voter-approved increase in the county's hotel/motel tax. The ad stated that the increase would not exceed one percent, would be generated at no cost to local residents, and would not discourage visitors from coming to the area.
- The second advertisement that the Cowlitz County PFD ran on the conference center project was entitled, "*State will pay for Conference Center & Expo Center Renovation.*" This 6" x 9" ad ran the last three days of March, 2003, and the first ten days of April, 2003. It contained an architect's drawing of the proposed conference center, and five paragraphs of text. The ad explained the mission of the Cowlitz County PFD, and provided information about the cost and impact of the project. It also stated that voters would be asked in the fall to approve a 1% tax on lodging charges in motels with more than 40 rooms. It said the money would be collected to cover operating costs not met by revenues, including the cost of a major marketing effort of the new facility.
- On July 23, 2003, the Cowlitz County PFD passed Resolution No. 03-02, requesting the Cowlitz County Auditor to place the proposed one percent lodging tax on the ballot. Voters approved the one percent lodging tax on September 16, 2003.
- The third advertisement paid for by the Cowlitz County PFD was entitled, "*Plans for Regional Conference and Events Center Shaping Up.*" This 7" x 9" ad contained an artist's rendition of the completed conference center, as well as two overhead drawings of its layout. The ad gave statistics on the square footage of different sections and described the internal configurations and furnishings. This ad did not mention the ballot measure, and ran three times in July and three times in August 2003. Mr. Graham stated that the July/August ad did not include a discussion of the proposed lodging tax because of the possible perception that such a discussion might be perceived as impermissible influencing of an election. A fourth ad was placed by the PFD in October 2003 to thank those who participated in the election and to explain how the additional revenue would be used.

The PFD is permitted under RCW 36.100.160 to expend funds for preparation and distribution of information to the general public promoting, advertising, improving, developing, operating, and maintaining facilities of the district, so long as the district does not prepare and distribute information to the general public for the purpose of influencing the outcome of a district election. The PFD paid for three newspaper ads, each of which ran on multiple occasions, to provide information to the public about the

project. The PFD ran the three advertisements multiple times because the facilities district was new and the PFD Board wanted to educate the public as to its existence, and its progress on the project. The PFD was aware of the prohibition of RCW 42.17.130, and believed it was in compliance with the law.

The primary purpose of the ads was to increase public awareness of the PFD, and to explain the project, including that the \$6.3 million cost would be funded by county sponsored bonds and state granted rural development funds, and that the bonds would be repaid with proceeds from an annual sales tax rebate. The ads also explained that operating the facility was projected to be 90 percent self-sufficient within three years of completion and that the PFD was considering a lodging tax to pay for the remaining 10 percent of operating revenue. The discussion of the proposed lodging tax was not the primary focus of the ads.

Thus, after a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the Cowlitz PFD Board of Commissioners.

If you have questions, please feel free to contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Cowlitz County Board of Commissioners
Cowlitz PFD Board of Commissioners